

United States

22

Circuit Court of Appeals

For the Ninth Circuit.

BELRIDGE OIL COMPANY, a Corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Supplemental
Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

1936-5 1936

PAUL F. GEMENY

No. 8114

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BELRIDGE OIL COMPANY, a Corporation,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

CLAUDE I. PARKER, Esq.,

JOHN B. MILLIKEN, Esq.,

L. A. LUCE, Esq.

For Comm'r:

R. W. WILSON, Esq.

Docket No. 31218

BELRIDGE OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES SINCE JANUARY 8, 1936.

1936

Jan. 8—Motion for extension of 30 days to transmit the record filed by taxpayer.

” 8—Order enlarging time to Feb. 25, 1936 to transmit and deliver record entered.

May 5—Decision entered, Logan Morris, Div. 14.

” 15—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

” 15—Proof of service filed.

1936

May 15—Praecipe with proof of service thereon filed.

” 20—Amended praecipe filed with proof of service thereon. [1]

United States Board of Tax Appeals

Docket No. 31218

BELRIDGE OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the opinion of the United States Circuit Court of Appeals for the Ninth Circuit rendered March 2, 1934 and its mandate of April 2, 1934 a memorandum supplemental findings of fact and opinion was entered in the above-entitled proceeding on September 30, 1935. In accordance therewith, it is

ORDERED AND DECIDED: That there is a deficiency in income and excess profits taxes of \$45,293.85 for the year 1921 and deficiencies in income tax of \$4,692.89 and \$4,684.91 for the years 1922 and 1923, respectively.

[Seal]

(s) LOGAN MORRIS,

Member.

Entered May 5, 1936. [2]

[Title of Court and Cause.]

PETITION FOR REVIEW TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Belridge Oil Company, a corporation, by its attorneys, Claude I. Parker, John B. Milliken and Llewellyn A. Luce, and respectfully shows:

I.

The petitioner on review (hereinafter referred to as the taxpayer), is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office located at Los Angeles, California. The respondent on review (hereinafter referred to as the Commissioner), is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The income tax returns of the taxpayer for the calendar year 1921, being the taxable year involved herein, were filed with the Collector of Internal Revenue for the Sixth [3] District of California, and the office of said Collector is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

II.

The Commissioner determined a deficiency in income and excess profits tax for the calendar year 1921 in the sum of \$45,293.85 and on July 18, 1927,

in accordance with the provisions of Section 274 of the Revenue Act of 1926, sent to the taxpayer by registered mail a notice of said deficiency. Thereafter the taxpayer filed an appeal from said notice of deficiency with the United States Board of Tax Appeals.

The hearing of said appeal to the United States Board of Tax Appeals was held in Los Angeles, California, on the 22nd day of May, 1930, before Honorable Stephen J. McMahan, Member, presiding. On August 16, 1932, the Board promulgated findings of fact and opinion in said appeal, and on August 17, 1932, the Board entered its decision in said appeal wherein and whereby the Board ordered and decided the amount of deficiency against the taxpayer for the calendar year 1921 to be \$45,293.85.

III.

The deficiency which was in controversy before the United States Board of Tax Appeals for the year 1921 arose or resulted from the determination of the Commissioner that the invested capital, as claimed by the petitioner for said year 1921, should be reduced by the sum of \$974,995.00. In the year 1911, the taxpayer issued its stock in the amount of one million shares, par value one dollar per share, in exchange for an option to purchase certain real estate. In its income and excess profits tax return for said calendar year 1921, the taxpayer included in its invested capital for tax purposes the par value of the stock issued for the option. The Commissioner refused to permit the taxpayer to include in its in-

vested capital the sum of \$1,000,000.00 and allowed and permitted it to include only the sum of \$25,000.00 and excluded therefrom the sum of \$974,995.00. The Commissioner further determined and held that the actual cash value of said option for which one million shares of stock were issued had an actual cash value on the date taxpayer acquired it of only \$25,000.00. The question at issue before the Board was the actual cash value of the option in the year 1911 when the taxpayer issued its stock in exchange for the same. The Commissioner contended that the actual cash value of said option was \$25,000 and the petitioner Corporation contended before the Board that the actual cash value of the option was not less than \$975,000.

In its opinion, promulgated on August 16, 1932, and reported in 26 B. T. A. 810, the United States Board of Tax Appeals sustained the determination of the Commissioner. The Honorable Stephen J. McMahon, Member of the United States Board of Tax Appeals who presided at the hearing on the 22nd day of May, 1930 and heard the evidence presented by the petitioner and the respondent, filed a dissenting opinion in which he declared that the evidence adduced at the hearing established an actual cash value for the option substantially in excess of \$25,000.

On August 17, 1932, the Board of Tax Appeals rendered a decision, ordering and deciding that there was a deficiency in the petitioner's income and excess profit taxes for 1921 in the amount [5] of

\$45,293.85 and deficiencies in petitioner's income taxes for the years 1922 and 1923, amounting respectively to \$4,692.89 and \$4,684.91. Thereafter the petitioner filed a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit.

The appeal was given Docket No. 7103 by the United States Circuit Court of Appeals for the Ninth Circuit and on March 2, 1932, the Court filed its opinion in which it stated, in part, as follows:

“But it appears from the probative facts contained in the findings of fact by the Board of Tax Appeals that in addition to the \$25,000 paid by the assignees of the option other payments amounting to \$160,000.00 were made by Mr. Hole in order to secure the option. In this connection it should be stated that from the probative facts set out in the opinion it appears that Hole had an option to purchase this land at \$20 per acre; that the organizers of the petitioner having discovered oil seepage on the land desired an option which would enable them to prospect for oil before they exercised their option to purchase. They were willing to enter into such an option for \$33.33 1/3 per acre, with the agreement that Hole who was to secure the option should get a one-fifth interest in the company to be formed. Hole, without disclosing to the organizers the fact that he had an option for \$20 an acre, went about securing the option at \$33.33 1/3 per acre, which included the privi-

lege of prospecting and developing oil before exercising the option to purchase. Hole did not disclose to the organizers that the purchase price fixed in his option was \$20 per acre, nor did the organizers of the company disclose to Hole or to Mrs. Hopkins the fact that they had discovered oil seepage on the land. Green was operating for the organizers of the company.

“If the sum of \$160,000 and one-fourth of his stock in the company was paid by Hole to secure an option which was more favorable in its terms than the one he then held and if this option so secured by him was turned over to the corporation, the fact that it cost Hole \$160,000 was an element to be considered by the Board in arriving at its conclusion as to the cost and as to fair cash value of the option.

“All that we have said in this matter is for the purpose of emphasizing the fact that there is no direct finding by the Board of Tax Appeals on the ultimate fact involved in the determination of this appeal, and, consequently, that the case must be returned to them for such a finding. We do not wish to be understood as determining whether or not [6] such payment of \$160,000 was made nor the circumstances or agreements under which it was made. That question is for the Board. We leave to the Board the question of whether or not it will reexamine the witnesses with reference to this payment of \$160,000 and the stock, whether they

will proceed to hear new or additional evidence upon the question of value, or will determine the value on the evidence already adduced before them.”

On April 2, 1934, the Court filed its mandate remanding the cause to the United States Board of Tax appeals, with directions to specifically find the actual value of the option given to Mr. Hole by Mrs. Hopkins at the time the said option was transferred to the Belridge Oil Company on January 25, 1911.

On April 24, 1934, the petitioner filed a motion with the Board, praying that the Board find as a fact that W. J. Hole did pay, in cash, the sum of \$160,000 to secure the option from Mrs. Hopkins and that he also agreed to give William Hill, who was agent for Mrs. Hopkins in California, one-fourth of his stock in the Belridge Oil Company for services in helping Hole to get the option from Mrs. Hopkins. The petitioner further moved that the Board set the case down for the taking of further testimony and evidence upon the question of the value of the option should the Board deem the same proper. It was further moved by the petitioner that the Board set the case down for argument pursuant to the mandate of the Court.

On May 2, 1934, the Board entered an order denying the petitioner's motion for the taking of additional testimony but setting the case down for argument on the mandate of the Court. On June 6,

1934, the cause was argued before the Board by counsel for the respective parties.

On September 30, 1935, the Board promulgated a memorandum [7] of supplemental findings of fact and opinion under the mandate of the Court.

In said supplemental findings of fact and opinion the Board found as a fact that Hole had some difficulty in getting Mrs. Hopkins to agree to the terms demanded by Green and Whittier and that Hole paid \$125,000 to Benedict, a nephew of Mrs. Hopkins, and \$35,000 in cash and one-fourth of his stock in the Belridge Oil Company to William Hill, agent of Mrs. Hopkins, for their assistance in securing the option. The Board held, in effect, that the payment of \$160,000 in cash by W. J. Hole to secure the option from Mrs. Hopkins and the transfer of one-fourth of Hole's stock in the Belridge Oil Company to William Hill to secure the option had no bearing upon the value of the option, and the Board, without taking into consideration the payment of the said \$160,000 in cash and the transfer of the one-fourth interest in the stock of the Belridge Oil Company held that the value of the option on January 25, 1911 was only \$25,000. The Board did not find the value of the stock in the Belridge Oil Company, transferred by Hole to William Hill for assistance in securing the option.

The Honorable Stephen J. McMahon, Member of the United States Board of Tax Appeals, again dissented.

On May 5, 1936, the United States Board of Tax Appeals entered its decision wherein and whereby the Board ordered and decided the amount of the deficiency against the taxpayer for the calendar year 1921 to be \$45,293.85. [8]

IV.

The taxpayer being aggrieved by the findings of fact and opinion of the Board promulgated on September 30, 1935, and the decision and order of redetermination entered by the Board on May 5, 1936, under the mandate of the Court says that in the record and proceedings before the United States Board of Tax Appeals and in the decision and order of redetermination rendered and entered by the United States Board of Tax Appeals, manifest errors occurred and intervened to the prejudice of the taxpayer. The taxpayer assigns the following errors and each of them, which it avers occurred in the said record, proceeding and order of redetermination and upon which it relies to reverse said decision and order of redetermination so rendered and entered by the United States Board of Tax Appeals, to-wit:

(1) The United States Board of Tax Appeals erred in making and entering its decision in this cause and in entering judgment in favor of Commissioner and against taxpayer.

(2) The United States Board of Tax Appeals erred as a matter of law and fact in deciding that the option which taxpayer acquired

on January 25, 1911 had only a value, for invested capital purposes, of \$25,000.00.

(3) The United States Board of Tax Appeals erred, as a matter of law, in disregarding the competent testimony of qualified witnesses that the option which taxpayer acquired on January 25, 1911, had an actual cash value of at least \$1,000,000.00 for invested capital purposes.

(4) The United States Board of Tax Appeals erred in its [9] conclusions of law and its application of the law to the facts.

(5) The United States Board of Tax Appeals erred in that the decision, opinion and order of the Board are contrary to the evidence and are not supported by the evidence or by any substantial or competent evidence.

(6) The United States Board of Tax Appeals erred in redetermining a deficiency against this taxpayer for the year 1921 amounting to \$45,293.85.

(7) The United States Board of Tax Appeals erred in that there is neither in the findings of fact by the Board nor in the opinion by the Board, any findings of fact to sustain the Board's conclusions of law as set forth in the Board's opinion and decision.

(8) The United States Board of Tax Appeals erred in that its conclusions of law stated in its opinion are contrary to and not in harmony with the Board's findings of fact.

(9) The Board of Tax Appeals erred by failing in its findings of fact and opinion

promulgated on September 30, 1935, and its decision rendered pursuant thereto and entered on May 5, 1936, to take into account and give proper effect to the suggestions of the Court as to factors to be considered in determining the actual cash value of the option.

(10) The Board of Tax Appeals erred by holding and deciding that the sum of \$160,000 paid by W. J. Hole in cash to secure the option from Mrs. Hopkins had no bearing upon the value of the option.

(11) The Board of Tax Appeals erred by holding and deciding that the stock in the petitioner corporation transferred to William Hill for his services in securing the option had no bearing upon the [10] value of the option.

(12) The Board of Tax Appeals erred by failing to find the fair market value as of January 25, 1911 of the stock in the petitioner corporation, transferred by Hole to William Hill, for his services in securing the option.

(13) The Board of Tax Appeals erred by failing to hold and decide that the value of the option on January 25, 1911, was not less than \$25,000; plus \$160,000 in cash paid by Hole to Benedict and Hill for services rendered in securing the option; plus one-fourth of the value of Hole's stock in the petitioner corporation as of January 25, 1911, transferred to Hill for his services in securing the option.

(14) The Board of Tax Appeals erred in deciding that the value of the option as of

January 25, 1911, was only \$25,000, without taking into consideration the cash payment of \$160,000 made by Hole and without taking into consideration the value of his stock in petitioner corporation, transferred to Hill for services rendered.

(15) The Board of Tax Appeals erred in failing to hold and decide that the \$160,000 paid by Hole and the fair market value of his stock in the petitioner corporation, transferred to secure the option were elements to be considered in arriving at the fair market value of the option.

(16) The Board of Tax Appeals erred by misconstruing the opinion of the United States Circuit Court of Appeals for the Ninth Circuit, filed on March 2, 1934, and by misconstruing the mandate of said Court, filed on April 2, 1934.

(17) The Board of Tax Appeals erred in not redetermining [11] the deficiencies in favor of the petitioner and against the Commissioner.

WHEREFORE, the taxpayer petitions that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit and that a transcript of the record be prepared in accordance with law, and with the rules of said Court, and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end

that the errors complained of be reviewed and corrected by said Court.

CLAUDE I. PARKER

JOHN B. MILLIKEN

808 Bank of America Building

Los Angeles, California

LLEWELLYN A. LUCE

937 Munsey Building

Washington, D. C.

Counsel for Taxpayer-Petitioner

City of Washington

District of Columbia.—ss.

LLEWELLYN A. LUCE, being first duly sworn, says:

That he is attorney of record for the above named taxpayer-petitioner, and as such is duly authorized to verify the above and foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review and is familiar with [12] the statements contained therein and that the facts therein stated are true, except such facts as may be stated on information, and those facts he believes to be true.

(Signed) LLEWELLYN A. LUCE

Subscribed and sworn to before me this 15th day of May, 1936.

[Seal]

(Signed) ELSIE P. DAMERON,

Notary Public

[Endorsed]: Filed May 15, 1936. [13]

[Title of Court and Cause.]

NOTICE.

TO: Hon. Robert H. Jackson,
Assistant General Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Counsel for Respondent on Review.

Notice is hereby given to you that Belridge Oil Company a Corporation, petitioner on review in the above entitled proceeding, did on the 15th day of May, A. D. 1936, file with the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision rendered by the said Board of Tax Appeals in said proceeding, a copy of which petition for review, as filed, is herewith served upon you.

CLAUDE I. PARKER

JOHN B. MILLIKEN

808 Bank of America Building
Los Angeles, California.

LLEWELLYN A. LUCE

937 Munsey Building,
Washington, D. C.

Counsel for Petitioner on Review

Service of the foregoing Notice and of a copy of the Petition for Review mentioned in said notice is acknowledged this 15th day of May, A. D. 1936.

HERMAN OLIPHANT

Counsel for Respondent on Review

[Endorsed]: Filed May 15, 1936. [14]

[Title of Court and Cause.]

PRAECIPE.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies, duly certified as correct, of the following documents and records in the above entitled proceeding in connection with the petition for review by the said United States Circuit Court of Appeals for the Ninth Circuit heretofore filed by the petitioner on review:

1. Docket entries of proceedings in this cause before the Board since January 8, 1936.
2. Petition for review of the Board's decision filed by petitioner on the 15th day of May, 1936.
3. Notice of filing of said Petition for review filed with the Board on the 15th day of May, 1936.
4. This praecipe.

CLAUDE I. PARKER

JOHN B. MILLIKEN

808 Bank of America Building

Los Angeles, California [15]

LLEWELLYN A. LUCE

937 Munsey Building,

Washington, D. C.

Counsel for Petitioner on Review.

Service of a copy of the within Praecipe is hereby admitted this 15th day of May, 1936.

(Signed) HERMAN OLIPHANT

General Counsel for the

Department of the Treasury.

[Endorsed]: Filed May 15, 1936. [16]

[Title of Court and Cause.]

AMENDED PRAECIPE.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies, duly certified as correct, of the following documents and records in the above entitled proceeding in connection with the petition for review by the said United States Circuit Court of Appeals for the Ninth Circuit heretofore filed by the petitioner on Review:

1. Docket entries of proceedings in this cause before the Board since January 8, 1936.
2. Decision of the United States Board of Tax Appeals entered on May 5, 1936.
3. Petition for review of the Board's decision filed by petitioner on the 15th day of May, 1936.
4. Notice of filing of said Petition for review filed with the Board on the 15th day of May, 1936. [17]
5. Praecipe filed with the Board on the 15th day of May, 1936.
6. This amended praecipe.

CLAUDE I. PARKER

JOHN B. MILLIKEN

808 Bank of America Building
Los Angeles, California

L. A. LUCE

937 Munsey Building
Washington, D. C.

Counsel for Petitioner on Review.

Service of a copy of the within Amended Praeipce is hereby admitted this 20th day of May, 1936.

HERMAN OLIPHANT

General Counsel for the Department
of the Treasury.

[Endorsed]: Filed May 20, 1936. [18]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 18, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeipce in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at washington, in the District of Columbia, this 2 day of July, 1936.

[Seal]

B. D. GAMBLE

Clerk, United States Board of Tax Appeals.

[Endorsed]: No. 8114. United States Circuit Court of Appeals for the Ninth Circuit. Belridge Oil Company, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Supplemental Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed July 13, 1936.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

